

Appendix A

Chapter I of Title 47 of the Code of Federal Regulations is amended by adding a footnote to Part 1, Subpart A-Practice and Procedure, as follows:

I. Part 1--PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.80 is amended by revising subsection (b) to read as follows:

§ 1.80 Forfeiture Proceedings.

(b) * * * * *

(4) * * *

NOTE:

GUIDELINES FOR ASSESSING FORFEITURES

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are \$25,000 for broadcasters and cable operators or applicants, \$100,000 for common carriers or applicants, and \$10,000 for all others. These base amounts listed are for a single violation or single day of a continuing violation. 47 U.S.C. § 503(b)(2); 47 C.F.R. § 1.80. For continuing violations involving a single act or failure to act, the statute limits the forfeiture to \$250,000 for broadcasters and cable operators or applicants, \$1,000,000 for common carriers or applicants, and \$75,000 for all others. *Id.* Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, § 31001, 110 Stat. 1321 (1996), civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts as provided by federal law, must be adjusted for inflation at least every four years based on the formula outlined in the DCIA. Thus, the statutory maxima increased to \$27,000 for broadcasters and cable operators or applicants; \$110,000 for common carriers or applicants, and \$11,000 for others. For continuing violations, the statutory maxima increased to \$275,000 for broadcasters, cable operators, or applicants; \$1,100,000 for common carriers or applicants; and \$82,500 for others. The increased statutory maxima became effective March 5, 1997. There is an upward adjustment factor for repeated or continuous violations, *see* Section II, *infra*. That upward adjustment is not necessarily applied on a per violation or per day basis. *Id.* Unless Commission authorization is required for the behavior involved, a Section 503 forfeiture proceeding against a non-licensee or non-applicant who is not a cable operator or common carrier can only be initiated for a second violation, after issuance of a citation in connection with a first violation. 47 U.S.C. § 503(b) (5). A citation is not required, however, for non-licensee tower owners who have previously received notice of the obligations imposed by Section 303(q) and Part 17 of the Commission's rules from the Commission. See Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules concerning Construction, Marking, and Lighting of Antenna Structures, 61 Fed. Reg. 04359 (Feb. 2, 1995). Forfeitures issued under other sections of the Act are dealt with separately in Section III below.

Section I. BASE AMOUNTS FOR SECTION 503 FORFEITURES

<u>VIOLATION</u>	<u>AMOUNT</u>
Misrepresentation/lack of candor	Statutory Maximum for each Service
Construction and/or operation without an instrument of authorization for the service	\$10,000
Failure to comply with prescribed lighting and/or marking	\$10,000
Violation of public file rules	\$10,000
Violation of political rules: reasonable access, lowest unit charge, equal opportunity, and discrimination	\$9,000
Unauthorized substantial transfer of control	\$8,000
Violation of children's television commercialization or programming requirements	\$8,000
Violations of rules relating to distress & safety frequencies	\$8,000
False distress communications	\$8,000
EAS equipment not installed or operational	\$8,000
Alien ownership violation	\$8,000
Failure to permit inspection	\$7,000
Transmission of indecent/obscene materials	\$7,000
Interference	\$7,000
Importation or marketing of unauthorized equipment	\$7,000
Exceeding of authorized antenna height	\$5,000

<u>VIOLATION</u>	<u>AMOUNT</u>
Fraud by wire, radio or television	\$5,000
Unauthorized discontinuance of service	\$5,000
Use of unauthorized equipment	\$5,000
Exceeding power limits	\$4,000
Failure to respond to Commission communications	\$4,000
Violation of sponsorship ID requirements	\$4,000
Unauthorized emissions	\$4,000
Using unauthorized frequency	\$4,000
Failure to engage in required frequency coordination	\$4,000
Construction or operation at unauthorized location	\$4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	\$4,000
Violation of transmitter control and metering requirements	\$3,000
Failure to file required forms or information	\$3,000
Failure to make required measurements or conduct required monitoring	\$2,000
Failure to provide station ID	\$1,000
Unauthorized pro forma transfer of control	\$1,000
Failure to maintain required records	\$1,000

Violations Unique to the Service

VIOLATION	SERVICES AFFECTED	AMOUNT
Unauthorized conversion of long distance telephone service	Common Carrier	\$40,000
Violation of operator services requirements	Common Carrier	\$7,000
Violation of pay-per-call requirements	Common Carrier	\$7,000
Failure to implement rate reduction or refund order	Cable	\$7,500
Violation of cable program access rules	Cable	\$7,500
Violation of cable leased access rules	Cable	\$7,500
Violation of cable cross-ownership rules	Cable	\$7,500
Violation of cable broadcast carriage rules	Cable	\$7,500
Violation of pole attachment rules	Cable	\$7,500
Failure to maintain directional pattern within prescribed parameters	Broadcast	\$7,000
Violation of main studio rule	Broadcast	\$7,000
Violation of broadcast hoax rule	Broadcast	\$7,000
AM tower fencing	Broadcast	\$7,000
Broadcasting telephone conversations without authorization	Broadcast	\$4,000
Violation of enhanced underwriting requirements	Broadcast	\$2,000

Section II. ADJUSTMENT CRITERIA FOR SECTION 503 FORFEITURES

Upward Adjustment Criteria

- (1) Egregious misconduct
- (2) Ability to pay/relative disincentive
- (3) Intentional violation
- (4) Substantial harm
- (5) Prior violations of any FCC requirements
- (6) Substantial economic gain
- (7) Repeated or continuous violation

Downward Adjustment Criteria

- (1) Minor violation
- (2) Good faith or voluntary disclosure
- (3) History of overall compliance
- (4) Inability to pay

**Section III. NON-SECTION 503 FORFEITURES THAT ARE AFFECTED
BY THE DOWNWARD ADJUSTMENT FACTORS**

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum of \$50,000 per day. For convenience, the Commission will treat the \$50,000 set forth in Section 223 as if it were a prescribed base amount, subject to downward adjustments. The amounts listed below were adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA) (Pub. L. No. 104-134, § 31001, 110 Stat 1321 (1996)). The new amounts became effective on March 5, 1997. These non-Section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for Section 503 forfeitures in Section II above.

Violation	Statutory Amount
Sec. 202 (c) Common Carrier Discrimination	\$6,600 \$330/day
Sec. 203 (e) Common Carrier Tariffs	\$6,600 \$330/day
Sec. 205 (b) Common Carrier Prescriptions	\$13,200
Sec. 214 (d) Common Carrier Line Extensions	\$1,200/day
Sec. 219 (b) Common Carrier Reports	\$1,200
Sec. 220 (d) Common Carrier Records & Accounts	\$6,600/day
Sec. 223 (b) Dial-a-Porn	\$55,000 maximum/day
Sec. 364(a) Ship Station Inspection	\$5,00 (owner)
Sec. 364(b) Ship Station Inspection	\$1,100 (vessel master)
Sec. 386(a) Forfeitures	\$5,500/day (owner)
Sec. 386(b) Forfeitures	\$1,100 (vessel master)
Sec. 634 Cable EEO	\$500/day

APPENDIX B**A. Comments**

1. American Mobile Telecommunications Association, Inc.
2. American Radio Relay League
3. Bell Atlantic Telephone Company
4. Brown and Schwaninger
5. Emery Telephone
6. Harrisonville Telephone Company
7. Infinity Broadcasting Corporation
8. MCI Telecommunications Corporation
9. MobileMedia Communications, Inc.
10. Mobile Phone of Texas, Inc.
11. National Association of Broadcasters
12. Paging Network, Inc.
13. Personal Communications Industry Association
14. San Bernardino Coalition of Low Power FM Broadcasting
15. Southwestern Bell Telephone Company
16. United States Telephone Association
17. WJGMariTEL Corporation

B. Informal Comment

1. William Dougan

C. Reply Comments

1. American Mobile Telecommunications Association, Inc.
2. MCI Telecommunications Corporation
3. Motorola, Inc.
4. National Telephone Cooperative Association
5. Personal Communications Industry Association
6. San Bernardino Coalition of Low Power FM Broadcasting
7. Southwestern Bell Telephone Company
8. United States Telephone Association

APPENDIX C

ADMINISTRATIVE MATTERS

Final Regulatory Flexibility Analysis

1. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) that was incorporated in the Notice of Proposed Rule Making (NPRM).¹ The Commission sought written public comments on all of the proposals in the NPRM, including the IRFA. Based on the analysis of the public comments, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact the Report and Order adopted today will have on small businesses and entities. The FRFA in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996).²

a. Need for and Purpose of This Action

2. Section 503 of the Communications Act, as amended, 47 U.S.C. § 503 (the Act) provides the statutory authority for the Commission to assess forfeitures for violations of the Act and the Commission's rules. This Report and Order amends Section 1.80 of the Commission's rules to incorporate by reference the Commission's forfeiture policy statement (Policy Statement) and the schedule of forfeitures as a note to the rule. Forfeitures are one of the tools available to the Commission to enhance and ensure compliance by serving as a sanction to a violator and a deterrent to other potential violators that are similarly situated. By adopting the forfeiture guidelines as a note to the rule, the Commission will provide guidance and clarity to all potential violators, including small businesses, as to base forfeiture amounts that can be expected for a violation of the Communications Act and the Commission's rules. The guidelines will also provide an increased level of predictability and uniformity in the forfeiture process. We believe that the footnote adopted here today has no substantial impact on small businesses. The footnote does not create a new substantive Commission rule with which small businesses must comply. The forfeiture policy adopted here today merely provides guidance as to the general forfeiture amount that any violator may expect the Commission to assess for a violation of the Act and rules. To ensure, however, that the forfeiture guidelines adopted today reflect the Commission's understanding of the impact of its regulations on small businesses as well as our efforts to analyze what, if any, regulatory relief can be provided to small businesses in light of this Report and Order, we will explain the steps taken to minimize any significant economic impact on small entities.

¹ *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 10 FCC Rcd 2945 (1995).

² Subtitle II of the CWAAA is the "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. §601 *et seq.*

b. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

3. In responding to the IRFA in the NPRM, several commenters, such as improved mobile telephone services (IMTS) or basic exchange telecommunications radio services (BETRS) contend that the Commission's determination of an entity's inability to pay a forfeiture based on its gross revenues erodes the protections otherwise given to small businesses in the Paperwork Reduction Act and the Regulatory Flexibility Act. They contend that these rural services will pay higher forfeitures than other licensees for similar violations because they are run by common carriers as an adjunct to the main operations whose gross revenue would be considered in determining the issue of inability to pay.³ These arguments were considered and rejected as discussed below.

4. At the outset, we note that forfeitures are imposed only against those who fail to comply with our rules. Thus, the issue of inability to pay a forfeiture or maintaining additional paperwork is moot as to small businesses that comply with the rules. As to those that violate the Act and rules, Commission precedent states that gross revenues is a starting point for determining a party's ability to pay. Commission cases, however, also indicate that factors other than gross revenues may be considered. Under Section 503 of the Act, the Commission must look at the inability to pay in light of the totality of the circumstances affecting the particular entity's ability to pay.⁴ This includes whether the company is a small business as defined by the Commission and/or the Small Business Administration (SBA) or whether the business is an adjunct of a larger corporation from which it can draw resources. Moreover, although the Commission has accepted audited financial statements as a method to assess a company's inability to pay a forfeiture, the Commission has flexibility to consider any documentation (e.g. balance sheet, profit and loss statement accompanied by licensee's certification) that it considers probative and objective evidence of the violator's ability or inability to pay a forfeiture. This also comports with the requirements of SBREFA.⁵

5. In the general comments to the NPRM, a number of commenters raised issues that might affect small entities. Many commenters oppose the system proposed in the NPRM that would impose differing base amounts based on the service rather than the violation involved. In particular, the commenters, including small commercial mobile radio services (CMRS), noted that the system proposed in the NPRM imposed larger forfeitures on common carriers without any regard for the common carrier's business size. Comments from CMRS entities also contend that, if the proposed fines are adopted, they should be treated in the "other" category as they were in the previous guidelines rather than the "common carrier" category which has higher base

³ See paragraphs 40-41 in the text of the instant *Policy Statement*.

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 5 U.S.C. § 601(5).

amounts and a higher statutory maximum.⁶ As adopted, this Policy Statement would impose forfeitures based on the violation and not the service as originally proposed. Thus, CMRS providers who are small businesses will not be treated to higher forfeiture amounts simply because of their "common carrier" status. Moreover, the base forfeiture amount, i.e., the amount at which the Commission may initially assess a forfeiture, is calculated in light of the lowest statutory maximum imposed under Section 503 of the Act, rather than the higher statutory maxima for broadcasters and common carriers. Thus, small broadcast and common carrier businesses are not subject to base amounts higher than those imposed on small businesses in the remaining category, i.e., the "other" category. As to those small businesses in the "other" category, the Commission generally gives warnings to first time violators, who are licensed by rule rather than on an individual basis, based on the facts of each case unless the violation is egregious or a serious safety of life issue.⁷ The adopted forfeiture policy statement also eliminated the proposed adjustment factor ranges, thus allowing the Commission to reduce a forfeiture to a minimum amount against a violator such as a small business if warranted by the facts of the case in light of the factors outlined in Section 503 of the Act.⁸ Lastly, we note that, in light of recent changes to the Equal Access to Justice Act made as part of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996), we will indicate an appropriate maximum forfeiture amount in cases where the Commission designates forfeiture matters for hearing. Because this maximum forfeiture amount will be based on the specific facts at issue rather than the statutory maximum for that service, small businesses in the "broadcast", "common carrier", and "other" services will not be subject to the statutory maxima in a hearing unless warranted by the facts in that case.⁹

c. Description and Estimate of Number of Small Businesses to Which Rules Will Apply:

6. The RFA generally defines "small entity" as having the same meaning as the terms "small business", "small organization", and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities. 15

⁶ See paragraphs 13 and 14 in the text of the instant *Policy Statement*. Section 503 of the Act sets out statutory forfeiture maxima based on three categories: "broadcast" (which includes cable), "common carrier", and "other" (which includes any individual or entity that is not included in the broadcast or common carrier categories). 47 U.S.C. § 503(b). We note that the recently enacted Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, § 31001, 110 Stat. 1321 (1996), requires that civil monetary penalties assessed by the federal government, whether set by statutory maxima or specific dollar amounts as provided by federal law, be adjusted for inflation.

⁷ See paragraphs 15 through 23 in the text of the instant *Policy Statement*.

⁸ See paragraphs 24 through 26 in the text of the instant *Policy Statement*.

⁹ See paragraph 50 in the text of the instant *Policy Statement*.

U.S.C. § 632.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹¹ The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.¹² There are 85,006 governmental entities in the United States. The forfeiture guidelines contained in the ~~note~~ adopted here today applies to Commission licensees and regulatees that are small businesses, small organizations, and small governmental jurisdictions as well as non-licensees that violate the Communications Act and the Commission's rules subsequent to receiving a warning.

7. It is difficult at this time to quantify precisely how many small business entities would be affected based on the radiotelephone data provided by the SBA. Inasmuch as we may assess forfeitures against companies and entities that are not radiotelephone companies, we must look beyond this category in order to develop our estimate. In addition to regulating the licensing of the electromagnetic spectrum, the Commission also authorizes and regulates the manufacturing and importation of radio transmitters and electronic equipment. Therefore, we will provide reasonable estimates by the services regulated by each Bureau or Office and ancillary entities affected by those services in light of the SBA and/or Commission definition of a small entity and other relevant defining factors. Where possible, we have also attempted to estimate the number of small businesses that may be assessed a forfeiture even though they are not regulatees but are subject to compliance with our rules, e.g., hotels that must comply with our regulations implementing the Hearing Aid Compatibility Act.¹³ In our effort to discuss all services and small businesses that could be impacted, we note that our discussion of some services may overlap or our discussion of some small businesses may be duplicative.

CABLE SERVICES OR SYSTEMS

8. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue

¹⁰ Regulatory Flexibility Act (RFA), 5 U.S.C. § 601(3)(1980) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹¹ Small Business Act, 15 U.S.C. § 632 (1996).

¹² Small Business Enforcement Fairness Act (SBREFA), 15 U.S.C. § 601(5). For example, there are 85,006 governmental entities in the United States of which 37,566 have populations of less than 50,000. United States Dept. of Commerce, Bureau of the Census, 1992 *Census of Governments* (1992 *Census*).

¹³ See *Report and Order in CC Docket No. 87-124*, 11 FCC Rcd 8249 (1996). See also *Erratum in CC Docket No. 97-124*, 11 FCC Rcd 9257 (1996).

annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.¹⁴

9. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.¹⁵ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.¹⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the forfeiture guidelines explained in the Report and Order adopted today.

10. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁷ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁸ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.¹⁹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

¹⁴ 1992 Census, *supra*, at Firm Size 1-123.

¹⁵ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995).

¹⁶ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹⁷ 47 U.S.C. § 543(m)(2).

¹⁸ 47 C.F.R. § 76.1403(b).

¹⁹ Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

11. The forfeiture guidelines in the Report and Order adopted today also applies to cable and MDS related entities.²⁰ The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less.²¹ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.²² This figure is overinclusive since it includes other pay television services, not only cable and MDS.

COMMON CARRIER SERVICES AND RELATED ENTITIES

12. According to the Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet), there are 2,847 interstate carriers. These carriers are regulated in some form by the FCC, and are, therefore, subject to its forfeiture provisions. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers. To the extent that we can ascertain businesses that, due to their relationship to these common carriers, may receive forfeitures, *e.g.*, hotels and motels that fail to provide service in compliance with the Hearing Aid Compatibility Act, these businesses are discussed herein.

13. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.²³ We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

14. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as

²⁰ Small Multipoint Distribution Services (MDS) businesses are discussed in depth with the mass media services at para. 53 *infra*. See Appendix C, para. 52.

²¹ 13 C.F.R. §121.201.

²² 1992 Census, *supra*, at Firm Size 1-123. See *Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 9531 (1996).

²³ 13 C.F.R. § 121.201.

mentioned above, we include small incumbent LECs in our analysis. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."²⁴

15. ***Total Number of Telephone Companies Affected.*** The forfeiture guidelines in the Report and Order adopted herein may apply to the small telephone companies identified by the SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.²⁵ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."²⁶ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent local exchange carriers that may be affected by the forfeiture guidelines adopted today.

16. ***Wireline Carriers and Service Providers.*** The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.²⁷ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.²⁸ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we

²⁴ See 13 C.F.R. § 121.210, SIC Code 4813.

²⁵ United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (*1992 Census*).

²⁶ 15 U.S.C. § 632(a)(1).

²⁷ *1992 Census*, *supra*, at Firm Size 1-123.

²⁸ 13 C.F.R. § 121.201, SIC Code 4812.

estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the adopted forfeiture guidelines.

17. **Local Exchange Carriers.** Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²⁹ The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.³⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the forfeiture guidelines.

18. **Interexchange Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.³¹ Although it seems certain that some of these carriers are not independently owned and operated, nor have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the forfeiture guidelines.

19. **Competitive Access Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive

²⁹ 13 C.F.R. § 121.201, SIC Code 4813.

³⁰ Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (*TRS Worksheet*).

³¹ *Id.*

access services.³² Although it seems certain that some of these carriers are not independently owned and operated, nor have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the forfeiture guidelines.

20. ***Operator Service Providers.*** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services.³³ Although it seems certain that some of these companies are not independently owned and operated, nor have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the forfeiture guidelines.

21. ***Pay Telephone Operators.*** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.³⁴ Although it seems certain that some of these carriers are not independently owned and operated, nor have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the forfeiture guidelines.

22. ***Providers of Telephone Toll Service, Providers of Telephone Exchange Service.*** Neither the Commission nor the SBA has developed a definition of small entities applicable to providers of telephone toll service and telephone exchange service. According to the 1992 Census, there were approximately 3,497 firms engaged in providing telephone services, as defined therein, for at least a year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular

³² *Id.*

³³ *Id.*

³⁴ *Id.*

carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated." It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are providers of telephone toll service or providers of telephone exchange service and are small entities that may be affected by the forfeiture guidelines.

23. ***Independent Operator Service Providers, Independent Directory Assistance Providers, Independent Directory Listing Providers, and Independent Directory Database Managers.*** We were unable to obtain reliable data regarding the number of entities that provide these telecommunications services or how many of these are small entities. The Commission has not developed a definition of small entities applicable to telecommunications service providers. Therefore, the closest applicable definition of a small entity providing telecommunications services is the definition under the SBA rules applicable to business services companies, SIC 7389, which defines a small entity to be a business services company with annual receipts of less than five million dollars. U.S. Census data provides that 46,289 firms providing business services had annual receipts of 5 million dollars or less. Because it seems unlikely that all of the business services firms would meet the other criteria, it seems reasonable to conclude that fewer than 46,289 firms may be small entities that might be affected by our forfeiture guidelines.

24. ***Resellers (including debit card providers).*** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company, SIC category 4813. However, the most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone service.³⁵ Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under the SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the forfeiture policy contained in the Report and Order.

25. ***800 Subscribers.*** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 subscribers. The most reliable source of information regarding the number of 800-subscribers of which we are aware appears to be the data we collect on the number of 800-numbers in use.³⁶ According to our most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain

³⁵ *Id.*

³⁶ Federal Communications Commission, CCB, Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbl. 20 (May 16, 1996).

that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the forfeiture guidelines adopted today.

26. **Location Providers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Because location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, we have derived a figure of 1,850,000 payphones in existence.³⁷ Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, we are unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,850,000 small entity location providers that may be affected by the forfeiture guidelines adopted in this Report and Order.

27. In addition to these common carrier licensees, those who may be held liable for forfeitures include non-licensees who provide telephone services as a result of the Hearing Aid Compatibility (HAC) Act or who are operator service providers : (a) workplaces; (b) confined settings, such as hospitals and nursing homes; (c) hotels and motels; and (d) importers and manufacturers of telephones for use in the United States. There is little overlap among these categories because the Commission's workplace rules affect workplace noncommon areas, while the rules that apply to confined settings and hotels and motels affect other than the workplaces of those establishments. Telephone manufacturers would be affected as workplaces, but separately affected by the requirement to affix the letters "HAC" to telephones and by the volume control manufacturing requirement. The determination of whether or not an entity within these industry groups is small is made by the SBA. These standards also apply in determining whether an entity is a small business for purposes of the RFA.

28. **Workplaces.** Workplaces encompass establishments for profit and nonprofit, plus local, state and federal governmental entities. Establishments with fewer than fifteen employees generally would be excluded, because they are exempt from the Commission's new rules, except for the work station requirement. The SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than \$25 million in

³⁷ There are approximately 1.5 million LEC payphones. Statistics of Communications Common Carrier, 1994/1995 edition, Common Carrier Bureau, FCC at 159, Table 2.10 (1995). There are approximately 350,000 competitively provided payphones. See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-388 (released September 20, 1996), at note 996.

sales or assets. There are approximately 6.3 million establishments in the SBA database. We estimate that our rules would affect fewer than 6.3 million establishments, because our rules exclude establishments with fewer than fifteen employees. However, we have not been able to determine what portion of the 6.3 million establishments have fewer than fifteen employees. The SBA data base does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our forfeiture guidelines.³⁸ There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.³⁹ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be subject to a potential forfeiture.

29. ***Confined Settings.*** According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of \$5 million or less in order to qualify as a small business concern. 13 C.F.R. §121.201. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of \$5 million or less.⁴⁰ There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of \$5 million or less. Thus, the approximate number of small confined setting entities to which the Commission's forfeiture guidelines may apply is 8,247.

30. ***Hotels and Motels.*** According to the SBA's regulations, hotels and motels must have annual gross receipts of \$5 million or less in order to qualify as a small business concern. 13 C.F.R. §121.201. There are approximately 34,671 hotel and motel firms in the United States. Of those, approximately 31,382 have gross receipts of \$5 million or less.⁴¹ Thus, the approximate number of hotels and motels to which the Commission's forfeiture guidelines may apply is 31,382.

31. ***Telephone Manufacturers and Importers.*** According to the SBA's regulations, telephone apparatus firms must have 1,000 or fewer employees in order to qualify as a small

³⁸ 5 U.S.C. § 601(5).

³⁹ 1992 Census of Governments, *infra*.

⁴⁰ See Small Business Administration Tabulation File, SBA Size Standards Tbl 2C, January 23, 1996, SBA, Standard Industrial Code (SIC) categories 8050 (Nursing and Personal Care Facilities) and 8060 (Hospitals) (SBA Tabulation File).

⁴¹ SBA Tabulation File, SIC category 7010.

business concern. 13 C.F.R. §121.201.⁴² There are approximately 456 telephone apparatus firms in the nation.⁴³ Figures are not available on how many of these firms have 1,000 or fewer employees, but 401 of the firms have 500 or fewer employees.⁴⁴ It is probable that the great bulk of the 456 firms have 1,000 or fewer employees, and would be classified as small entities. In addition to telephone apparatus firms, there are approximately 12,654 wholesale electronic parts and equipment firms in the nation. Many of these firms serve as importers of telephones.⁴⁵ According to the SBA's regulations, wholesale electronic parts and equipment firms must have 100 or fewer employees in order to qualify as a small business entity. 13 C.F.R. §121.201. Of the 12,654 firms, 12,161 have fewer than 100 employees, and would be classified as small entities.⁴⁶

INTERNATIONAL SERVICES

32. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁴⁷

33. Because the RFA amendments were not in effect until the comment period for this proceeding was closed, the Commission was unable to request information regarding the number of licensees in the international services discussed below that meet this definition of a small business. Thus, we are providing an estimate of licensees that constitute a small business.

34. ***International Broadcast Stations.*** An international broadcast station employs frequencies allocated to the broadcasting service between 5,950 and 26,100 kHz. The transmissions of an international broadcast station, which are licensed to non-governmental entities only, are intended to be received directly by the general public in foreign countries.

⁴² See *Report and Order in CC Docket 87-124*, 11 FCC Rcd 8249 (1996), at note 266 (explaining that no foreign entity submitted comments on the NPRM implementing access, nor have we been able to obtain data on foreign telephone equipment manufacturers from other sources. The SBA does not compile data on foreign manufacturers).

⁴³ U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC Code 3661.

⁴⁴ *Id.*

⁴⁵ U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC Code 5065.

⁴⁶ *Id.*

⁴⁷ 13 C.F.R. § 120.121, SIC Code 4899.

Commission records show that there are 20 international broadcast station licensees. Although we were unable to request the revenue information, we estimate that most of the international broadcast licensees would constitute a small business under the SBA definition.

35. *International Fixed Public Radio (Public and Control Stations).*

International fixed public radio is a fixed service in which the stations are intended to provide radio communications between any one of the 50 states or any U. S. possession and any foreign point. In addition, radio communications within the contiguous 48 states in connection with the relaying of international traffic between stations which provide the above service are also deemed international fixed public radio. There are 15 licensees in this service. Although we were unable to request the revenue information, we estimate that some of the international broadcast licensees would constitute a small business under the SBA definition.

36. *Recognized Private Operating Agency.* The Commission's rules provide a procedure for companies to request a formal designation as a Recognized Private Operating Agency (RPOA). The term RPOA was used in the International Telecommunications Union (ITU) Convention in force at the time the rule was adopted. That convention provides that an RPOA is a "private operating agency" (a company that provides an international telecommunications service or operates a radio facility capable of causing harmful interference with the radio services of other countries) that is authorized by a country that is a member of the ITU. In 1992, the ITU changed the term to "recognized operating agency" (ROA) with essentially the same definition. All entities that the Commission has authorized as common carriers under the Communications Act, including those domestic common carriers for whom the Commission has waived the requirement to obtain Section 214 authorization, are ROAs for purposes of the ITU. Those entities that operate radio frequencies capable of causing harmful interference with radio operations in other countries are also ROAs. Additionally, the U.S. Department of State grants ROA status to enhanced service providers under the Commission's ROA-designation rules. The Department has designated approximately 20 such enhanced service providers ROAs.

37. *Section 214 Applications.* Section 214 of the Communications Act requires common carriers to obtain a certificate that the public convenience and necessity requires or will require construction and/or operation of a line of communication, or the discontinuance, reduction or impairment of service. There are more than 500 Section 214 license applications per year. Although we were unable to request the revenue information, we estimate that the majority of the licensees with this status would constitute a small business under the SBA definition.

38. *Fixed Satellite Transmit/Receive Earth Stations.* Fixed satellite transmit/receive earth stations include international and domestic earth stations operating in the 4/6 GHz and 11/12/14 GHz bands. There are approximately 4200 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. Although we were unable to request the revenue information, we estimate that some of the earth stations would constitute a small business under the SBA definition.

39. ***Fixed Satellite Small Transmit/Receive Earth Stations.*** Small transmit/receive earth stations operate in the 4/6 GHz frequency bands with antennas that are two meters or less in diameter. There are 4200 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. Although we were unable to request the revenue information, we estimate that some of the fixed satellite transmit/receive earth stations would constitute a small business under the SBA definition.

40. ***Receive Only Earth Stations.*** These stations are licensed only to receive transmissions from satellites. There are approximately 6,390 receive only earth station registrations on file. Although we were unable to request the revenue information, we estimate that most of the receive only earth stations would constitute a small business under the SBA definition.

41. ***Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.*** VSAT systems operate in the 12/14 GHz frequency bands. Although various size small earth stations may be used, all stations of a particular size must be technically identical. Because these stations operate on a primary basis, frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. At this time, we are unable to estimate of the number of small business licensees that are VSAT systems that could be impacted by the forfeiture guidelines.

42. ***Mobile Satellite Earth Stations.*** Mobile satellite earth stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub station or stations. The network may provide a variety of land, maritime and aeronautical voice and data services. There are two licensees. At this time, we are unable to estimate of the number of small business licensees that are mobile satellite earth stations that could be impacted by the forfeiture guidelines.

43. ***Radio Determination Satellite Earth Stations.*** A radio determination satellite earth station is used in conjunction with a radio determination satellite service (rdss) system for the purpose of providing position location information. These stations operate as part of a network that includes a fixed hub station or stations that operate in the frequency bands (1610 - 1626.5 MHz and 2483.5 - 2500 MHz) allocated to rdss. There are two licensees. At this time, we are unable to estimate the number of small business licensees that are radio determination satellite earth stations that could be impacted by the forfeiture guidelines.

44. ***Space Stations (Geostationary).*** Satellite services use radio transmission between authorized geostationary satellite space stations and earth stations for common carrier and private communications. FCC authorization is required to construct, launch and operate space stations. Commission records reveal that there are 24 space station licensees. At this time, we are unable to estimate of the number of small business licensees that are geostationary space stations that could be impacted by the forfeiture guidelines.

45. **Space Stations (Non-Geostationary).** Satellite space stations orbit the earth in non-geostationary orbits. Because a satellite system is generally comprised of a number of technically identical space stations, a "blanket" system application may be filed for a specified number of space stations. The space stations may transmit to fixed or mobile earth stations for common carrier or private communications. There are six Non-Geostationary Space Station licensees. At this time, we are unable to estimate of the number of small business licensees that are Non-Geostationary Space Stations that could be impacted by the forfeiture guidelines.

46. **Direct Broadcast Satellites.** The direct broadcast satellite (DBS) service permits signals transmitted or retransmitted by space stations to be directly received by the public. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services. This definition provides that a small entity is expressed as one with \$11.0 million in annual receipts.⁴⁸ There are eight DBS licensees as of December 1996. At this time, we are unable to estimate of the number of small business licensees that are DBS licensees that could be impacted by the forfeiture guidelines.

MASS MEDIA SERVICES

47. **Commercial Radio and Television Services.** The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees, permittees and potential licensees of either service.⁴⁹ The SBA defines a television broadcasting station that has no more

⁴⁸ SIC Code 4841.

⁴⁹ We tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations. However, for purposes of this *Policy Statement*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the forfeiture guidelines adopted in this *Policy Statement* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. § 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96-113 (Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, 10 or fewer full-time employees; (2) based on operation in a small market; (3) based on operation in a market with a small minority work force; or (4) based on a combination of these factors.

than \$10.5 million in annual receipts as a small business.⁵⁰ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁵¹ Included in this industry are commercial, religious, educational, and other television stations.⁵² Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁵³ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁵⁴ There were 1,509 television stations operating in the nation in 1992.⁵⁵ That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.⁵⁶ For 1992,⁵⁷ the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁵⁸

48. Additionally, the Small Business Administration defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁵⁹ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by

⁵⁰ 13 C.F.R. § 121.201, SIC Code 4833 (1996)

⁵¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 *Census of Transportation, Communications and Utilities, Establishment and Firm Size*, Series UC92-S-1, Appendix A-9 (1995).

⁵² *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations" (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁵³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 *Census of Transportation, Communications And Utilities, Establishment and Firm Size*, Series UC92-S-1, Appendix A-9 (1995).

⁵⁴ *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁵⁵ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁵⁶ FCC News Release No. 64958, Sept. 6, 1996.

⁵⁷ Census for Communications' establishments are performed every five years ending with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁵⁸ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁵⁹ 13 C.F.R. § 121.201, SIC 4832.

radio to the public.⁶⁰ Included in this industry are commercial, religious, educational, and other radio stations.⁶¹ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.⁶² However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.⁶³ The 1992 Census indicates that 96 percent of (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.⁶⁴ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁶⁵ As of August 1996, official Commission records indicate that 12,088 radio stations were operating.⁶⁶

49. Thus, the Report and Order adopted today will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.⁶⁷ Additionally, the Policy Statement will affect 12,088 radio stations, approximately 11,605 of which are small businesses.⁶⁸ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license such as a permittee may be affected by the forfeiture guidelines in the Report and Order. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

Alternative Classification of Small Stations

50. An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees

⁶⁰ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁶⁵ FCC News Release No. 31327, Jan. 13, 1993.

⁶⁶ FCC News Release No. 64958, Sept. 6, 1996.

⁶⁷ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1996 total of 1,550 TV stations to arrive at 1,194 stations categorized as small businesses.

⁶⁸ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.